JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-1174 Decided November 8, 1983

Appeal from a decision of the Colorado State Office, Bureau of Land Management, requiring execution of no-surface occupancy stipulations for certain lands in oil and gas lease offer C 34166.

Affirmed in part; set aside and remanded in part.

1. Environmental Quality: Generally--Oil and Gas Leases: Stipulations

   The Board of Land Appeals will affirm a decision rejecting an oil and gas lease offer because of important geological features in the lands sought where the record supports the need to protect the resource and the offeror fails to indicate how leasing would be compatible with protection.

2. Environmental Quality: Generally--Oil and Gas Leases: Stipulations

   The Board of Land Appeals will affirm a decision requiring execution of no-surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

APPEARANCES: James M. Chudnow and John L. Messinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On July 19, 1982, James M. Chudnow and John L. Messinger (appellants herein) filed a notice of appeal from a decision of Colorado State Office,

Bureau of Land Management (BLM), dated June 17, 1982, relating to an over-the-counter oil and gas lease offer which had been serialized as C-34166. As submitted, the offer embraced various lands in T. 11 N., R. 78 W., sixth principal meridian. In addition, appellants sought lot 1 and the SE 1/4 NE 1/4 of sec. 1, T. 10 N., R. 79 W.

In its decision, BLM notified appellant of two separate rulings. First, it rejected all of the land sought in T. 10 N., R. 79 W., on the ground that "Public Land Order 3701 has withdrawn the land in Lot 1 and SE 1/4 NE 1/4 * * * and no leasing is allowed as the North Sandhills Area contains important geological features." With reference to the other lands in the offer, appellants were informed that various special stipulations had to be signed as a precondition to issuance of the lease.

In their statement of reasons for appeal, which embraced two other leases which were the subject of a decision styled James M. Chudnow, 70 IBLA 225 (1983), appellants objected to "overly-strict stipulations." Specifically they argued that "the no surface occupancy stips are due to somewhat 'nebulous' reasons (such as the BLM plat's stating parts are a 'natural area' without giving specifics)." They requested consideration of less strict stipulations.

A review of appellants' substantive objections is impeded by the fact that there is no copy of any no-surface occupancy stipulation in the record so we are unable to ascertain to which lands it would apply. However, it clearly does not apply to lot 1 and the SE 1/4 NE 1/4 sec. 1, T. 10 N., R. 79 W., as that land was rejected. Because of the confusion in the record, we shall treat appellants' objection as one going to the rejection of this acreage.

Initially, we would note that while Public Land Order (PLO) No. 3701, 30 FR 7899 (June 18, 1965), did withdraw the subject land from the operation of the mining laws for the protection of unique scientific and recreation values, it did not withdraw the land from the operation of the mineral leasing laws. Thus, PLO 3701 expressly provided: "The withdrawal made by paragraph 1 of this order does not alter the applicability of the public land laws governing the use of the lands under leases, license or permit, or governing the disposal of their mineral and vegetative resources other than under the mining laws." 30 FR at 7900. It is clear, therefore, that nothing in PLO 3701, by its own terms, required rejection of this lease offer. This, however, is not dispositive of the instant appeal.

[1] As we noted in James M. Chudnow, supra, while the fact that an order withdrawing land from mineral entry and location did not also withdraw the land from mineral leasing suggests that leasing for oil and gas would not be inconsistent with the purposes of the withdrawal, the Secretary nevertheless retains the authority to refuse to issue a lease even where the land remains unwithdrawn from the operation of the mineral leasing laws. Id. In the instant case, refusal to lease was premised on an Environmental Analysis Report (EAR) which noted, with reference to human interest values, that:

> There are numerous geologic resources that are unique and interesting in the county. One of the most important is the North and East Sand Hills areas. The sands were deposited at the base of the Medicine Bow Mountains by the westerly winds blowing across the park floor.
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> Most of the recreational use occurring on public lands is of a dispersed nature. Common examples are hunting, fishing, camping, cross-country skiing, off-road vehicle use, wildlife viewing and floatboating. There are a few intensively [sic] ORV sites in the North Sand Hills.

(EAR at 12). The umbrella environmental assessment recommended no leasing.

In James M. Chudnow, supra, the State Office, rather than reject the lease offer in conformity with the recommendation of the EAR, sought to issue the lease with a no-surface occupancy stipulation. We set aside that decision noting "neither the case record nor the umbrella environmental analysis indicate any reason for issuing the lease subject to the 'no surface occupancy' stipulation, in preference to refusing to lease at all, or leasing subject to some less stringent stipulation." Id. at 226. In contradistinction, in the instant case the State Office has rejected the lease to the extent it embraced land in the North Sand Hills area. Not only is this in conformance with the recommendation of the EAR, but appellants have failed to show how this decision was in error. We will affirm this part of the State Office's decision.

[2] With respect to the remainder of the decision, however, the inadequate state of the record compels us to set it aside and remand it for further action. The absence of copies of the required stipulations prevents us from ascertaining whether a no-surface occupancy stipulation applies to any land in T. 11 N., R. 78 W. We recognize that it is possible that no such stipulation applies at all and that appellants may simply be mistaken. If, on the other hand, such a stipulation was given to appellants, there is no justification in the record which would support its imposition. On remand, the State Office is directed to reexamine the stipulations sent to appellants as they relate to T. 11 N., R. 78 W. Since appellants have already signed the other stipulations, should it be determined that the no-surface occupancy stipulation did not apply to the lands in T. 11 N., R. 78 W., a lease should issue for those lands. If, on the other hand, the State Office intended to apply a no-surface occupancy stipulation to those lands, it should justify that stipulation in the record, and provide appellants an opportunity to accept that stipulation. Should appellants object, they may pursue an appeal to this Board under the guidelines set forth in Carl Gerard, 70 IBLA 343, 346 n.2 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to rejection of lot 1 and the SE 1/4 NE 1/4 of sec. 1, T. 10 N., R. 79 N., and is set aside as to the lands in T. 11 N., R. 78 W., and the case is remanded for further action consistent with this opinion.

James L. Burski
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge